

REMARKS:

Claims 49-52, 54-59, and 81-93 have been examined. Claims 49, 81, 83, and 92 have been amended. Claim 94 has been added. Consequently, claims 49-52, 54-59, and 81-94 are now pending.

Objections

As detailed above, the newly added amendments and claim 94 have overcome and/or rendered moot each and every objection raised in the Office Action with respect to now pending claims. Specifically, the duplicate claim 85 is now presented as new claim 94.

35 U.S.C. §103 Rejections

The Office Action rejected claims 49-50, 52, 54-59 and 83-91 under 35 U.S.C. §103(a) as being unpatentable over U.S. Pub. 2002/0062069 (“Mault-069”) in view of U.S. Pub. 2006/0053184 (“Grana”). Specifically, on pages 4-6, the Office Action acknowledged that the primary reference Mault-069 discloses, teaches, or suggests, at most, only the following two limitations of claim 49: *“receiving, by a computer system, identification of a user, wherein the identification of the user comprising an initial profile representative of characteristics of the user comprising a initial weight of the user”* and *“storing, by a computer system, the updated dataset, wherein the updated dataset comprising the at least one second dietary recommendation and being utilized by the user to control body weight.”*

Further, on pages 4-6, the Office Action stated that the secondary reference Grana discloses, teaches, or suggests the remaining numerous limitations of claim 49. Further, on page 6, the Office Action stated that its combination of Mault-069 and Grana “would have been obvious to one of ordinary skill in the art at the time of the invention ...because this combines the prior art elements of weight control and altering and suggesting diet recommendations to yield the predictable result of weight management. Mault 069 teaches diet planning by having the user enter personal information. Grana teaches the ability to suggest alternative food because of new personal data.”

Further, on pages 2-3, in section “Response to Arguments,” the Office Action stated that “[t]he Mault 069 reference not only calculates the RMR of a client but also provides a system for weight management” and that “even though applicant argues that Mault 069 is just for RMR calculation, Applicant admits on page 16 of the arguments that RMR calculation necessitates an

updated weight data.” For the following reasons, Applicants respectfully disagree with the Office Action’s above analysis.

First, the Office Action’s proposed combination of Mault-069 with Grana **disregards** Mault-069’s **fundamental** disclosure of its **teaching away** from such combination. Specifically, Mault-069 **expressly** identifies that, as Mault-069 sees, there is a problem with “*weight management, also referred to as weight control*” because of “*a person’s RMR has been estimated using the Harris-Benedict **equation**, which relates RMR to body height, **weight**, age, and gender...[a]lternatively, charts and tables, usually based on the Harris-Benedict equation...*” -- i.e., Mault-069 believes that the **problem** is that the “*weight control*” **relies on equations, charts, and tables built on measuring weight**. See Mault-069 at Paragraph 5. (emphasis added.) Mault-069 **expressly** teaches that **estimating** “weight control” **by measuring weight is unreliable** because “*an actual RMR that is significantly **different** from the estimate [calculated based on measuring weight].*” See Mault-069 at Paragraph 6. (emphasis added.) Mault-069 further **expressly** teaches that “*there is an **even more serious inadequacy***” in **relying on weight measurements** in “weight control programs” because “*estimating the resting metabolic rate of a person **using an equation may lead to large errors in calculating** the caloric needs and activity levels required for an effective weight control program.*” See Mault-069 at Paragraph 7. (emphasis added.) Consequently, recognizing the asserted “***serious inadequacy***” with **relying on weight measurements** in “weight control programs,” Mault-069 teaches that “*RMR can be determined using an **indirect** calorimeter.*” See Mault-069 at Paragraph 8. (emphasis added.)

In contrast to Mault-069’s disclosed **distrust** in “weight control programs” that employ equations, charts and tables relied upon direct measurements, including the direct measurements of weight, Grana discloses that its “*knowledge-based system for personalized menu generation*” is based on its “*various technologies for data manipulation*” -- i.e., **equations, charts and tables**, -- that utilize “a set of inputs provided by the user” -- i.e., **direct measurements, including weight measurements of Grana’s users**. See Grana at Paragraph 6. See also Grana at Paragraph 8 (“*The application program may use the field values to provide **a menu plan based on the manipulation of said plurality of fields** by employing a combination of databases.*”) See also Grana at Paragraph 49 (“*Selection of **computations** field 142 may allow a user to perform a number of calculations. As shown in FIG. 14 in connection with **computation** screen 1100, calories per individual per day field 1102, and grams of protein per individual per day field*

1103 are identified. Additional **computational** fields may be created by selecting enter **computational** field 1101 and following the prompts for setting up a **computational** option.”) See also Grana at Paragraph 53 (“The system 10 makes the knowledge and expertise of a nutritionist available to a user by **assessing a user's personal medical file and interview summary to provide a recommendation** for the ultimate menu for health and lifestyle.”) See also Grana at Paragraph 63 (“In a preferred embodiment, the system of the invention retains all possible cases and retrieves information and makes recommendations according to **a unique user's inputs and constraints.**”) See also Grana at Paragraph 65 (“System 10 may also **compute nutrient composition** for menus associated with an age group or range of grade levels for comparison to the USDA information and **weighted nutritional analysis** for a one- to seven-day menu cycle.”) (emphasis added.) **Consequently, as detailed above, Mault-069 teaches the weight control programs that is the opposite of the Grana’s program and thus teaches away from being combined with Grana.** Therefore, contrary to the Office action’s statement on page 6, the combination of Mault-069 and Grana would **not** have been obvious to one of ordinary skill in the art at the time of Applicants’ claimed invention.

Further, since, as detailed above, Mault-069 expressly **teaches away** from using calculating RMR by using equations, charts and tables, the Office Action’s statement on pages 2-3 that “[t]he Mault 069 reference not only calculates the RMR of a client” is respectfully incorrect. Moreover, the Office Action’s statement on pages 2-3 that “even though applicant argues that Mault 069 is just for RMR calculation, Applicant admits on page 16 of the arguments that RMR calculation necessitates an updated weight data” is, respectfully, **incorrect** interpretation of Applicants’ position in their previous response. As detailed above, Applicants have consistently noted that Mault-069 teaches the **indirect -- without inputting user’s weights into equations, charts and tables** -- estimation of RMR by employing Mault-069’ “**indirect calorimeter.**” Mault-069 at Paragraph 22. (emphasis added.) Consequently, the fact that, the Office Action acknowledges that “RMR calculation **[i.e., directly--using RMR equation]** necessitates an updated weight data” supports Applicants’ position that Mault-069 teaches away from Applicants’ claimed invention. (emphasis added.)

Moreover, in order to expedite the examination and to clarify the Applicants’ claimed invention in view of the above detailed disclosure of Mault-069, Applicants’ now amended claims now specifically require, *inter alia*, in claim 49: “*automatically altering, by a computer*

system, at least one second dietary recommendation to be provided to the user, wherein the at least one second dietary recommendation is based at least in part on the updated weight of the user from the updated dataset and comprising, for at least one second food, a second quantity, a second type, or a combination thereof, which is recommended to control body weight of the user.” (emphasis added.)

Grana specifically discloses that in “customizing the menu plan,” only the information about “*special metabolic needs, health status, and food preferences and allegories*” and “*meal patterns*” from Grana’s “Personal Database 52” “***should*** be considered.” (see Grana at paragraphs 35 and 52) (emphasis added.) As Grana further discloses, **neither** of Grana’s “*special metabolic needs,*” “*health status,*” “*food preferences and allegories,*” **nor** “*meal patterns*” **includes** user’s **weight**. (see Grana at paragraphs 34 and 52) (emphasis added.) The **only** Grana’s disclosure of tracking “weight” is in context where there are **additional analyses required** performed to compare “*menu-based and measured data [e.g., weight]*.” (see Grana at paragraph 48) (emphasis added.) Consequently, Grana does not disclose, teach, or suggest and teaches away from Applicants’ claimed limitation of : “*automatically altering, by a computer system, at least one second dietary recommendation to be provided to the user, wherein the at least one second dietary recommendation is based at least in part on the updated weight of the user from the updated dataset and comprising, for at least one second food, a second quantity, a second type, or a combination thereof, which is recommended to control body weight of the user.*” (emphasis added.)

In sum, as detailed below, Mault-069 **teaches away** from being combined with Grana and Mault -069 and Grana do **not** disclose, teach, or suggest **all** limitations claimed by Applicants’ independent claims 49 and 83, alone or in combination. In addition, it is noted that each of now pending dependent claims depends (directly or indirectly) from the independent claims 49 and 83. Thus, while various features recited in these dependent claims may be patentably distinct on their own, in order to expedite prosecution of the application it will simply be noted here that each of these dependent claims is submitted to be patentably distinct for at least the same reasons as the independent claim from which it depends.

The Office Action further rejected claims 81, 82, 92, and 93 35 U.S.C. §103(a) as being unpatentable over Mault-069 in view of U.S. Pub. 2002/0027164 (“Mault-164”). Since each of claims 81, 82, 92, and 93 depends on independent claims 49 or 83 and as detailed above the Office Action acknowledged that Mault-069 does not disclose, teach, or suggest all limitations of the independent claims 49 and 83, for purposes of addressing this rejection, Applicants assume that the Office Action meant that each of claims 81, 82, 92, and 93 is being unpatentable over Mault-069 in view of Grana and further in view of Mault-164. Specifically, regarding Mault-164, on page 15, the Office Action acknowledged that, in paragraph 74, Mault-164 discloses that Mault-164’s **user “or other authorized people [of the user]** (e.g. physician, health-related business employee, dietician, personal trainer, etc.) may access the data e.g. via a website.” (emphasis added.) Further, Mault-164 discloses that its disclosure is directed to “[portable computing apparatus **for aiding a user in the monitoring of the [user’s] consumption of consumable items.**” (see Mault-164 at Abstract) (emphasis added.) Consequently, Mault-164 is directed to its user’s **personal** use and, hence, Mault-164’s list of “**authorized people**” includes people who are **not similar users** of Mault-164’s “portable computing apparatus” but “professionals” who are **assisting** Mault-164’s **individual user** “in the monitoring of the [user’s] consumption of consumable items.” *Id.* (emphasis added.) In contrast, claims 81 and 92 specifically require the access to be provided to the **similar users** -- “the received at least one recipe is shared by the user with the community of users of the online personalized weight control program.” (emphasis added.) To further clarify this claimed feature, Applicants’ now amended claims 81 and 92 specifically recite that “the user is a member of a community of users of the online personalized weight control program.” Therefore, Mault-164 does not disclose, teach, or suggest this feature of Applicants’ claimed invention. In addition, it is noted that each of claims 82 and 93 are now pending dependent claims depends (directly or indirectly) from the claims 81 and 92. Thus, while various features recited in these dependent claims may be patentably distinct on their own, in order to expedite prosecution of the application it will simply be noted here that each of these dependent claims is submitted to be patentably distinct for at least the same reasons as the claim from which it depends.

Hence, each and every rejection raised in the Office Action has been overcome and/or rendered moot, Applicants respectfully submit that the above-identified application is now in condition for allowance.

Additionally, as detailed above, this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

In view of the foregoing amendments and remarks, Applicants' attorney respectfully requests allowance of now pending claims. If such action cannot be taken, however, the Examiner is cordially invited to place a telephone call to Applicant's attorney to resolve any outstanding issue without the issuance of a further Office Action.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,
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